

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA :
4 v. : Criminal No. 04-46 Erie
5 EDWARD BURKHART :
6 :

7
8
9 Detention Hearing in the above-captioned
10 matter held on Monday, February 27, 2006,
11 commencing at 2:00 p.m., before the Honorable
12 Susan Paradise Baxter, at the United States Courthouse,
13 Courtroom B, 17 South Park Row, Erie, Pennsylvania
14 16501.

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18
19 For the United States of America:

20 Christian A. Trabold, Esquire
21 Office of the United States Attorney

22 For the Defendant:
23 Stephen Sebald, Esquire

24
25 Reported by Janis L. Ferguson, RPR

I N D E X

TESTIMONY OF MATTHEW L. REA

Direct examination by Mr. Trabold	3
Cross-examination by Mr. Sebald	15
Redirect examination by Mr. Trabold	18

EXHIBITS:

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1 THE CLERK: The case before the Court is United
2 States of America versus Edward O. Burkhardt. It's docketed
3 at No. 04-46 Erie. Representing the Government is Christian
4 Trabold. Representing the Defendant is Stephen Sebald.

5 THE COURT: Good afternoon. As I explained to
6 you, Mr. Burkhardt, the last time I saw you, we're going to
7 be deciding today whether or not you should remain in jail
8 before your revocation hearing in front of the District
9 Judge. Do you understand?

10 MR. BURKHART: I understand, yes.

11 THE COURT: Mr. Trabold?

12 MR. TRABOLD: Thank you, Your Honor. The
13 Government calls Probation Officer Matt Rea.

14
15 M A T T H E W L. R E A, first having
16 been duly sworn, testified as follows:

17
18 THE CLERK: State your full name and spell your
19 last name for the record.

20 THE WITNESS: Matthew L. Rea, R-E-A.

21
22 DIRECT EXAMINATION

23 BY MR. TRABOLD:

24
25 Q. Sir, how long have you worked as a U.S. Probation

1 Officer?

2 A. Three years.

3 Q. And during the course of those three years, have
4 you been assigned to supervise Edward Burkhart?

5 A. Yes, I have.

6 Q. And this is Mr. Burkhart here (indicating)?

7 A. Yes, it is.

8 Q. Okay. And was Mr. Burkhart convicted of a federal
9 offense in the Western District of Pennsylvania?

10 A. He was convicted in the District of Utah
11 originally.

12 Q. And his District of Utah conviction was for
13 traveling across state -- interstate lines with the intent
14 to engage in sexual contact with a minor.

15 A. This is with a juvenile, but that's correct.

16 Q. And for that conviction in the District of Utah,
17 he got 30 months' incarceration.

18 A. That's correct.

19 Q. And during the course of his incarceration and/or
20 adjudication on that, his supervision time was transferred
21 from the District of Utah back to the Western District of
22 Pennsylvania.

23 A. That's correct.

24 Q. And what was the reason for the transfer from Utah
25 back to Pennsylvania?

1 A. This is his hometown.

2 Q. So he was living -- Mr. Burkhart was living in the
3 Western District of Pennsylvania when he committed his
4 federal offense.

5 A. That's correct.

6 Q. You then began to supervise him on federal
7 supervised release when?

8 A. The first time?

9 Q. Correct.

10 A. I began supervising him on August 3rd of '04.
11 Well, let me check that date.

12 Q. Sure. Take your time.

13 A. Actually, the very first time I began supervising
14 him, on April 27th of '03.

15 Q. And Mr. Burkhart was then out on supervised
16 release here in the Erie area for a period of time.

17 A. That's correct.

18 Q. And then you moved to revoke his supervised
19 release back in October of '04.

20 A. That's correct.

21 Q. And subsequent to your filing of a petition for
22 supervised release revocation, was Mr. Burkhart's supervised
23 release actually revoked?

24 A. Yes, it was.

25 Q. And that would have occurred, again, in mid

1 October of 2004.

2 A. October 15th, 2004.

3 Q. And what was the -- what was the basis or the
4 reason for the revocation back in October of 2004?

5 A. He was having contact with minors without the
6 permission of the Court or me.

7 Q. And subsequent to his supervised release
8 revocation, Mr. Burkhardt received a sentence of an
9 additional year of incarceration and two more years of
10 supervised release.

11 A. That's correct.

12 Q. And he was then released back on September 27th of
13 '05, and then you then began to supervise him again.

14 A. That's correct.

15 Q. Now, subsequent to his release in late September
16 of 2005, very early on in your renewed supervision of him,
17 did you have a conversation with him that caused you some
18 concern?

19 A. That would be on February -- well, I had a couple
20 conversations --

21 Q. Back in October of '05, did you have a brief
22 conversation, or did Mr. Burkhardt share some information
23 with you that caused some concern?

24 A. Yes. On October 11, 2005, and also again on
25 February 3rd, 2006 --

1 Q. Well, let's first take October 11th of 2005.

2 A. Okay.

3 Q. What, if anything, did Mr. Burkhardt tell you that
4 caused you some concern?

5 A. He told me he had two temptations for neighborhood
6 children.

7 Q. And did you get into that with him, or did you
8 have him explain that to you or point out who the
9 neighborhood children actually were?

10 A. On that particular date, I did not get into
11 specifics with him.

12 Q. Now, on February 1st of 2006, do you and your
13 fellow Probation Officer, Dave Condi, travel to
14 Mr. Burkhardt's house?

15 A. Yes, we do.

16 Q. Was there an event that precipitated you going
17 there or some reason that caused you to go to his house on
18 February 1st?

19 A. On January 31st, 2006, Mr. Burkhardt again said
20 that he had two different temptations for neighborhood
21 children.

22 Q. And, again, were any specifics provided in that
23 regard?

24 A. Well, he said they were in very close proximity to
25 his house. And I took that to believe just on his street

1 right there.

2 Q. And separate -- we'll talk in a second about what
3 happens on February 1st. But did you take some further
4 action in regard to Mr. Burkhardt's revelation to you about
5 his temptations with regard to those children?

6 A. On February 3rd, 2006, I notified the adult
7 parents of the two children that lived two doors down from
8 his residence that he was a registered sex offender.

9 Q. And how old were the kids that lived at that house
10 where you went and notified their parents?

11 A. One was approximately 11 or 12. The other one was
12 five or six.

13 Q. Now, you and Mr. Condi then go to Mr. Burkhardt's
14 house on February 1st of '06.

15 A. That's correct.

16 Q. What was your purpose in going there?

17 A. It was a standard visit that we do with any --
18 anybody that's under supervision. But because of his
19 statements made on the 31st of January, we took it out to be
20 there within a short time period, which would have been the
21 1st.

22 Q. Okay. And upon going there, did you -- was
23 Mr. Burkhardt home?

24 A. Yes, he was.

25 Q. And did he allow you to come in the house?

1 A. Yes, he did.

2 Q. And did you then have a conversation with him?

3 A. Yes, we did.

4 Q. As part of your stay at his residence, did you go
5 into his bedroom?

6 A. I and U.S. Probation Officer David Condi did.

7 Q. And did you see some things in his bedroom which
8 gave you a cause for concern?

9 A. The first thing that Probation Officer Condi
10 noticed was a pair of tennis shoes that appeared to be
11 smaller in size. From there, Mr. Condi --

12 Q. Let me -- go ahead. I didn't mean to interrupt.

13 A. Mr. Condi --

14 MR. SEBALD: Judge, I'm going to object to any
15 testimony as to what Mr. Condi did or did not see from
16 Mr. Rea.

17 THE COURT: I understand that. In this type of
18 proceeding, though, that is permissible, so overruled.

19 BY MR. TRABOLD:

20 Q. Go ahead.

21 A. We then -- Mr. Burkhardt, myself, and David Condi
22 then entered his bedroom. From there, we saw DVD's on the
23 floor; one in particular that appeared to be adolescent
24 males. And there was also another DVD there on the floor
25 beside that one. And there was also a black/silver metal

1 block, which appeared to me to be an external hard drive.

2 Q. And subsequent to finding that initial DVD, did
3 Probation Officer Condi then discover in the bedroom under
4 Mr. Burkhart's bed a whole dozen or so additional DVD's?

5 A. Right. There was 11 more; young, very young men.
6 They were gay DVD videos or DVD's. So there was 13 total.

7 Q. And to be fair, did those DVD's appear to be
8 commercially produced DVD's?

9 A. They appeared to be, yes.

10 Q. And would it be fair to say that those are
11 centered or themed around the idea of young men or
12 adolescent boys?

13 A. Yes. They all seemed to be -- the first one we
14 originally saw appeared to me to be 14-, 15-year-old boys,
15 but they all were younger men.

16 Q. Did you and Probation Officer Condi begin to
17 discuss these items of concern with Mr. Burkhart?

18 A. Yes, we did.

19 Q. And did the topic of the external hard drive come
20 up?

21 A. Yes, it did.

22 Q. And was Mr. Burkhart asked specifically during the
23 course of that conversation on the 1st of February whether
24 or not there may be child pornography on the external hard
25 drive?

1 A. Yes. I asked him -- I asked him that question,
2 and he said there may or may not be, but he wasn't sure. He
3 also stated he was trying to wipe it clean, but didn't have
4 the modern computer at that time to do it. That's what he
5 told me then.

6 Q. And you then, as part of your work that day as
7 Probation Officers, took with you the -- some items that
8 were of concern to you and secured them in the Probation
9 Office safe, correct?

10 A. That's correct.

11 Q. And those items would be generally the external
12 hard drive, two floppy diskettes that were there, and the
13 DVD's that we have talked about.

14 A. That's correct.

15 Q. Now, subsequent to that interaction at
16 Mr. Burkhardt's house, on February 2nd of this year, did
17 Mr. Burkhardt come for an office visit to your office here in
18 the courthouse?

19 A. Yes, he did.

20 Q. And did Mr. Burkhardt reveal things to you during
21 the course of that conversation that were of concern to you?

22 A. Yes, he did.

23 Q. What did he tell you?

24 A. He stated that he was on line, on the computer
25 viewing and searching for porn and kiddie porn.

1 Q. Now, did that conversation occur on February 2nd
2 or later on after February 2nd?

3 A. That conversation occurred on -- well, I'm sorry.
4 That conversation, when he -- when he admitted to surfing
5 Internet porn, it was on the 16th of February.

6 Q. But on the 2nd -- we'll get to what happened on
7 the 16th momentarily. But on the 2nd, does Mr. Burkhart
8 indicate to you what -- why or what happens to him when he
9 watches pornography?

10 A. He admitted that when he watches gay porn, it's a
11 trigger for him to have sexual fantasies of having sex with
12 minor-aged males.

13 Q. And did he indicate to you anything else of
14 concern to you with regard to his ability to control his
15 behavior during your discussion on February 2nd?

16 A. He mentioned that the night before he was suicidal
17 and that he was accompanied -- on the February 2nd office
18 appointment, he was accompanied by his brother to the
19 office.

20 Q. Did he say why?

21 A. Just for added support and that he may or may not
22 trust himself to drive alone.

23 Q. What did you take that to mean?

24 A. That he could act out irrationally; possibly
25 victimize some unsuspecting minor.

1 Q. And he then indicated to you during the course of
2 also the February 2nd conversation that he wasn't worried
3 about what was on the diskettes, but that the hard drive may
4 be bad, and he was somewhat worried about what may be on the
5 hard drive.

6 A. That's what he said, yes.

7 Q. Based on your interactions, then, with
8 Mr. Burkhart, a federal search warrant was obtained
9 authorizing the search of the data held on the external hard
10 drive.

11 A. That's correct.

12 Q. Now, on February 16th, you had a further
13 conversation or further interaction with Mr. Burkhart.

14 A. That's correct.

15 Q. And what, if anything, did Mr. Burkhart say on
16 February 16th with regard to any computer activity that he
17 might be engaged in?

18 A. He said he had been on line, on the computer, on
19 the Internet, and that he had been surfing the web for --
20 for porn and kiddie porn.

21 Q. So he indicated that he was actively looking for
22 child pornography and viewing it on his computer.

23 A. Well, he didn't necessarily say he was only
24 looking for child pornography, but that he was looking for
25 pornography, and that kiddie porn became part of his

1 searches.

2 Q. And did he indicate that during the course of
3 searching that he actually found any child pornography?

4 A. He said he did.

5 Q. Now, just with regard to a few background factors
6 as they relate to Mr. Burkhardt, you had an opportunity to,
7 during the course of your supervision, review Mr. Burkhardt's
8 presentence report.

9 A. That's correct.

10 Q. And does the presentence report drafted by the
11 District of Utah, does it contain a section describing his
12 evaluation by a psychologist?

13 A. Yes, it does.

14 Q. And does the psychologist, during the course of
15 that evaluation, provide a diagnosis of Mr. Burkhardt?

16 A. I believe it's an Axis I pedophile diagnosis.

17 Q. And that would have been an evaluation that
18 occurred around the time he had been convicted in the
19 District of Utah.

20 A. That's correct.

21 Q. Which would have been back in '01.

22 A. That's correct.

23 Q. Now, as part of your supervision duties of
24 Mr. Burkhardt, would it be fair to say that the FBI's Salt
25 Lake City office provided to you a videotape?

1 A. Yes, they did.

2 Q. And is there a portion of the videotape that
3 depicts Mr. Burkhart?

4 A. Yes, there is.

5 Q. And in the portion depicting Mr. Burkhart, is it
6 fair to say that Mr. Burkhart is masturbating?

7 A. Yes.

8 Q. And during the course of him masturbating, is
9 Mr. Burkhart discussing his child molestation activities?

10 A. Yeah.

11 Q. And does Mr. Burkhart specifically name children
12 or point to pictures in the videos?

13 A. Yes, he does.

14 MR. TRABOLD: Nothing further, Your Honor.

15 THE COURT: Cross-examination, sir.

16

17 CROSS-EXAMINATION

18 BY MR. SEBALD:

19

20 Q. Now, does my client keep all of his appointments
21 with you?

22 A. Yes, he does.

23 Q. And does he attend all Court-ordered, under the
24 term of his supervised release, counseling?

25 A. Yes, he does.

1 Q. And who does he attend counseling with?

2 A. Dr. Kovacs, Dr. Paul Kovacs.

3 Q. Would it be fair to characterize it, when
4 Mr. Burkhardt -- when you allege that he was talking to you,
5 that he was actually indicating to you that he wanted your
6 help in drafting a safety plan for him?

7 A. I'm unfamiliar with what you mean by a "safety
8 plan".

9 Q. Well, wasn't he proactively coming into your
10 office saying that he was concerned about some feelings that
11 he was having?

12 A. That's correct.

13 Q. And he was telling you, as his Probation
14 Officer -- he divulged this on his own; is that correct?

15 A. On his own, that's right.

16 Q. Now, as part of your supervision, you're required
17 to know where he resides; is that correct?

18 A. That's correct.

19 Q. And where does he reside?

20 A. 1726 West 50th Street.

21 Q. Who does he reside there with?

22 A. His brother John.

23 Q. Do you know what his brother John's occupation is?

24 A. I believe he's an instructor.

25 Q. And you also indicated that the day that you're

1 alleging that my client came in and made these statements,
2 that he brought his brother with him. Is that correct?

3 A. That would have been on the February 2nd visit,
4 yes.

5 Q. And he brought his brother in because he was
6 actually concerned.

7 A. I believe so. You're saying John was concerned
8 for Ed?

9 Q. Yes.

10 A. I didn't talk to John specifically, but I believe
11 that's what he was there for.

12 Q. I want to talk to you about this February 16th
13 meeting. At that time were you aware of the fact that I had
14 been retained by Mr. Burkhardt?

15 A. Not till the end of the meeting on the 16th.

16 Q. So at no point before that did anybody reveal to
17 you that I had, in fact, been retained.

18 A. That's correct.

19 MR. SEBALD: Your Honor, may I have a moment?

20 THE COURT: You may.

21 (Discussion held off the record.)

22 Q. Now, these videos that you discussed taking, you
23 said that you locked them in a safe at Probation?

24 A. The hard drive and the diskettes were locked in
25 the safe.

1 Q. And are those tagged with some sort of tag?

2 A. They never left my sight. They were immediately
3 locked up in a safe.

4 Q. And the DVD, as far as you know, that was -- did
5 that have a U.S. seal warning for pornography on it; that
6 it's legal?

7 A. After we investigated that further, we did see
8 that, yes.

9 MR. SEBALD: That's all I have, Your Honor.

10 THE COURT: Thank you.

11 MR. TRABOLD: Just a few follow-ups, Your Honor.

12

13 REDIRECT EXAMINATION

14 BY MR. TRABOLD:

15

16 Q. Would it be accurate to say that Mr. Burkhardt's
17 approved residence is in close proximity to St. George's
18 School?

19 A. That's correct.

20 Q. Within --

21 A. About two and a half blocks.

22 Q. And would you characterize Mr. Burkhardt as being a
23 person who has over time indicated to you an increasing
24 concern about his own ability to control himself?

25 A. Yes.

1 MR. TRABOLD: Nothing further, Your Honor.

2 THE COURT: Thank you. Anything else?

3 MR. SEBALD: Nothing, Your Honor.

4 THE COURT: You may step down. Thank you very
5 much, Officer Rea.

6 Mr. Trabold, next witness.

7 MR. TRABOLD: Nothing further, Your Honor.

8 THE COURT: Any proffer other than that?

9 MR. TRABOLD: I don't know if you want me to -- I
10 can proffer his -- Mr. Burkhardt's presentence report. I
11 guess it's Government's 1.

12 THE COURT: I don't think I have that.

13 MR. TRABOLD: I think you probably have that in
14 your file, but --

15 (Discussion held off the record.)

16 MR. TRABOLD: This can be Government's 1, Your
17 Honor.

18 (Government Exhibit No. 1
19 marked for identification.)

20 MR. TRABOLD: That would be all additional that we
21 would have relative to the -- I don't know if you need -- I
22 can proffer the search warrant that was resulting in -- that
23 resulted in the search of the --

24 THE COURT: That's just cumulative. We have the
25 testimony.

1 MR. TRABOLD: Thank you.

2 THE COURT: Attorney Sebald?

3 MR. SEBALD: Just argument, Your Honor.

4 THE COURT: Do you have any proffers or witnesses
5 at this time?

6 MR. SEBALD: No, Your Honor.

7 THE COURT: That's fine. We'll start with you,
8 then, on the argument.

9 MR. SEBALD: Your Honor, I'd argue that you should
10 consider releasing Mr. Burkhardt. I realize what the
11 standard is here; that it's clear and convincing. The
12 burden is upon me that that is appropriate for you to
13 consider doing that.

14 I would ask you to consider the following
15 factors: According to Mr. Rea's testimony, you have heard
16 that Mr. Burkhardt allegedly came in and indicated to him
17 that he was concerned about his safety. I would -- I would
18 question -- I mean, what Mr. Burkhardt indicated to Mr. Rea
19 indicates to me that he's actually following his probation
20 plan; attempting -- not attempting, but actually being
21 successful in not harming anyone in the community.

22 Furthermore, Your Honor, currently at the
23 prison, he is not receiving the proper medication, he is not
24 receiving the group treatment with Dr. Paul Kovacs. I would
25 ask that the Court consider -- and I would like the Court to

1 know that my client would be open to chemical castration,
2 house arrest. In this way he would be able to attend his
3 treatment meetings with Dr. Kovacs.

4 I would also ask the Court -- and the reason
5 that I asked Mr. Rea these questions -- to consider the fact
6 that my client isn't simply at home alone three blocks from
7 St. George's School. It's more of a situation where his
8 brother is a teacher, his brother is an adult, and his
9 brother is very willing and able to help supervise his
10 conduct.

11 THE COURT: His brother is gone five days a week
12 teaching during the day; is that correct?

13 MR. SEBALD: Yes.

14 THE COURT: And the Defendant doesn't have another
15 employment?

16 MR. SEBALD: No, he does not have employment, Your
17 Honor.

18 THE COURT: Okay. Thank you.

19 MR. TRABOLD: Your Honor, the Bail Reform Act
20 directs you to consider a number of characteristics and
21 circumstances that are present in this case. Unfortunately
22 in this case for Mr. Burkhardt, none of the factors that you
23 are directed to consider mitigate in his favor.

24 This is a Defendant with a prior conviction
25 involving the attempted, at least, sexual exploitation of a

1 minor. This is a Defendant who over time has increasingly
2 been indicating his inability to control his sexual desires
3 towards children. This is a Defendant who not more than
4 approximately a year and a half ago was -- had his
5 supervised release revoked the first time because he
6 couldn't do what he was required to do. And the first time
7 for his supervised release revocation was because he was
8 having unsupervised contact with minors. This time the
9 situation is hardly better, because he's accessing child
10 pornography on the Internet, which is doubly concerning,
11 because not only is it child pornography, but this Defendant
12 has indicated that viewing that type of material triggers
13 his sexual fantasies towards minor males.

14 Plainly, Your Honor, there is nothing in the
15 record before you as it relates to the Bail Reform Act that
16 is in Mr. Burkhardt's favor. He does not work, he has shown
17 little or no ability to abide by his probationary
18 requirements, as evidenced by his prior revocation.

19 There has been no evidence presented by Mr.
20 Burkhardt with regard to a third-party custodian. And even
21 if there was, what difference would it make, because
22 Mr. Burkhardt obviously was committing crimes prior to coming
23 into court here today relative to his child pornography
24 endeavors.

25 So we would ask that you retain him pending

1 the revocation hearing and find that there has been probable
2 cause established for the revocation. Thank you.

3 THE COURT: Thank you. Anything you would like to
4 respond to that with, Attorney Sebald?

5 MR. SEBALD: No, Your Honor.

6 THE COURT: I am concerned about the medication at
7 the Erie County Prison. Have you talked to anyone there
8 about that?

9 MR. SEBALD: Yes, Your Honor. His brother has
10 actually made several contacts, attempting -- he has the
11 scripts for the medication to be filled, but I guess it's
12 some kind of administrative problem and who pays for these.

13 His brother has indicated a willingness to
14 pay for the prescriptions to get them to Mr. Burkhardt.

15 THE COURT: And is the prison unable to do that?
16 Do they want to fill the prescription themselves? Do you
17 understand how that works?

18 MR. SEBALD: My understanding of it is, there's
19 some hold-up; that they actually have to have a script from
20 the prison doctor, which doesn't make any sense to me.

21 THE COURT: I see. So he has to be seen by the
22 prison doctor.

23 MR. SEBALD: Yes.

24 MR. TRABOLD: Your Honor, in general terms, the
25 prison doesn't allow inmates to come in with their own

1 prescription.

2 THE COURT: That's my recollection. I was
3 wondering if a prescription -- I think that's right. I was
4 trying to think of a way that he could -- but it doesn't
5 seem like it would work. If they had a prescription that
6 they filled instead of coming in with the actual
7 medication -- but he has to see a physician. Is there one
8 scheduled, do you know?

9 MR. SEBALD: I do not know, Your Honor.

10 THE COURT: You have to keep pushing that, since
11 he has to have that treatment.

12 Mr. Burkhardt, I'm going to keep you detained
13 until your revocation hearing, which is scheduled for
14 March 10th.

15 Now, the order that I signed in these
16 situations actually is a 10-day order, so -- not a 10-day
17 order. I'm sorry -- well, it's 10 days if you don't count
18 the weekends, and that is what is happening here. So it
19 will be in effect until March 13th, so that will include the
20 revocation hearing. For the reasons that I find that the
21 ability to view and to search for child pornography on the
22 Internet is of a concern to me, obviously, because the
23 tendencies, though in check till this point, I'm not
24 confident that that could be kept in check.

25 And your brother, though, of course, is

1 well-meaning, I don't think he can be there all the time.
2 We also can't take the ability for your brother, because of
3 his profession, to take the Internet out of the house.

4 That, along with the past history, the past
5 revocation order, and the violations pending against you
6 with regard to the pornography you had with you in your
7 room, is clear and convincing evidence to me that you could
8 be a danger to the community if you were released in the
9 next 10 days. Do you understand?

10 MR. BURKHART: I understand.

11 THE COURT: You may appeal that order to the
12 District Judge in this time period before the hearing.

13 Is there anything else, Mr. Trabold?

14 MR. TRABOLD: No, Your Honor.

15 MR. SEBALD: No, Your Honor.

16 THE COURT: I will have the Order filled out and
17 signed for you in a few minutes. Thank you. We are
18 adjourned.

19

20 (Hearing concluded at 2:39 p.m.)

21

22

23

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25